

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**RESPONSE TO PSC'S MOTION TO ENTER CASE MANAGEMENT ORDER  
GOVERNING COORDINATION OF DISPOSITIVE MOTIONS**

Defendants Box Hill Surgery Center, LLC, Ritu Bhambhani, M.D., Ritu T. Bhambhani, M.D., LLC (collectively "Box Hill Defendants") hereby submit this response to the PSC's Motion to Enter Case Management Order Governing Coordination of Dispositive Motions [Dkt. 1711].

Introduction

At a status conference on January 14, 2015, the Court expressed interest in addressing multiple and similar motions to dismiss more efficiently. Accordingly, the Plaintiffs' Steering Committee ("PSC") filed its proposed case management order ("CMO") attempting to address these issues on February 25, 2015. However, the PSC's proposal further complicates the current situation. On March 6, 2015, the Saint Thomas Entities filed a response identifying many of the practical problems with the PSC's proposal and proposed a CMO that attempts to remedy many of these problems [Dkt. 1721]. On March 10, 2015, the Tennessee Clinic Defendants also filed a similar response [Dkt. 1722].

With this response, the Box Hill Defendants:

- 1) Join in the response filed by the Saint Thomas Entities and the Tennessee Clinic Defendants and hereby adopt and incorporate those arguments.

- 2) Support entry of the CMO proposed by the Saint Thomas Entities [Dkt. 1721];  
and in the alternative;
- 3) Support the alternative CMO proposed by the Tennessee Clinic Defendants [Dkt. 1722].

#### Discussion

The Box Hill Defendants are the first Maryland Defendants brought into this MDL. Unlike Tennessee, Maryland has a three year status of limitations, which is undisputed by Plaintiffs. At the January 14, 2015, status conference the PSC suggested that they had hundreds of other lawsuits to file against other Maryland clinic defendants. Those lawsuits have not yet been filed. It is presumed, however, that defendants involving other Maryland patients and Maryland clinics will also file motions to dismiss once those cases have been filed.

The Box Hill Defendants filed their own motions to dismiss in eight separate similar cases and are currently conferring with counsel for Maryland Plaintiffs in an attempt to narrow the issues existing in their motions to dismiss. It is anticipated that Plaintiffs will withdraw some claims and that the parties may be able to reach agreement on some of the other issues. The Court will need to address the remaining issues.

The CMO as proposed by the PSC at issue here, however, will certainly complicate the coordination of motions to dismiss that have not yet been filed in Maryland cases, especially as they relate to lawsuits that have not yet been filed. The CMO's proposed by both the Saint Thomas Entities and the Tennessee Clinic Defendants are much simpler and less complicated and would better serve the interests of the Court.

Conclusion

The Box Hill Defendants join the responses of the Saint Thomas Entities and the Tennessee Clinic Defendants and move the Court to reject the PSC's proposal as unworkable due to its significant legal and practical problems. The Box Hill Defendants respectfully request that the Court enter either (1) the CMO proposed by the Saint Thomas Entities or (2) in the alternative, the CMO proposed by the Tennessee Clinic Defendants. Either CMO will be more effective and practical in accomplishing the Court's goals.

Respectfully submitted,

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\*Admitted pursuant to MDL Order No. 1.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 12<sup>th</sup> day of March, 2015.

/s/ Gregory K. Kirby  
Gregory K. Kirby